LE COPY

Office-Supreme Court, U.S.
FILED
DEC 2 1958
JAMES R. BROWNING, Clerk

No. 490

In the Supreme Court of the United States

OCTOBER TERM, 1958

THE MEADOW BROOK CLUB, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
PERRY W. MORTON,
Assistant Attorney General,
ROGER P. MARQUIS,
Attorney,
Department of Justice,
Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1958

No. 490

THE MEADOW BROOK CLUB, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinions of the district court (153a-158a, 178a-180a [1]) are reported at 149 F. Supp. 749. The opinions of the court of appeals (Pet. App. 15-33) are reported at 259 F. 2d 41.

JURISDICTION

The judgment of the court of appeals was entered August 6, 1958 (Pet. App. 34). The petition for a writ of certiorari was filed November 4, 1958. The juris-

---

[1] References to Petitioners' Appendix in the court of appeals are designated by "a"; the Government's Appendix is referred to as "Gov. App."

diction of this Court is invoked under 28 U. S. C. 1254(1).

QUESTION PRESENTED

Whether petitioner had a fair trial on the issue of just compensation.

STATEMENT

This condemnation proceeding was instituted to acquire 48.8 acres of land in fee for the expansion of Mitchel Air Force Base, Long Island, New York.[2] The facts are fully stated by the court of appeals (Pet. App. 16-19) and the district court (153a-156a) and may be briefly summarized as follows:

For many years petitioner operated a golf and polo club on some 326 acres of land. In 1953 and 1954 it sold a total of 200 acres to the State of New York. Part of this acreage was used as a site for the Jones Beach State Parkway and 51 acres were condemned by the United States for the enlargement of Mitchel Field. See *United States* v. *Jones Beach State Parkway Authority*, 255 F. 2d 329, certiorari denied, October 13, 1958 (No. 244). The present proceeding was filed in October 1954. In the preceding April, petitioner had unsuccessfully sought to change the zoning of the tract from residential to commercial. Officials at Mitchel Field had objected, one ground being that flight hazards would be created by industrial use of the tract, located, as it was, 750 feet from the end of one runway and 1100 feet from another.

Petitioner's two experts valued the property at $30,000 per acre. In reaching this figure, they relied on several sales of nearby property. These properties,

---

[2] Also involved was an additional 19.5 acres included in the original taking but dismissed some eleven months later.

sold at prices which ranged generally from $11,500 to $15,500 per acre (Gov. App. 16), were more favorably situated than the condemned property (Pet. App. 22) and were zoned industrial (or the sale was made contingent upon a change to such zoning). The Government's expert valued the property at $8,500 per acre, relying on sales of nearby properties which were zoned residential. He expressed the opinion that a buyer might give a little more in view of the possibility of rezoning.

The trial court awarded $10,000 an acre. It stated that to appraise the property as though a zoning change had occurred would permit the owner to receive compensation based on a prohibited use, while denial of any increment attributable to the prospect of a favorable zoning change would be unjust. In denying a motion for additional findings, the district judge said that, although the possibility of a change of zoning might have affected value, "it is inconceivable that this price would be the equivalent of that paid when the proposed use was not contingent upon a future speculative event" (179a-180a).

The court of appeals affirmed (one judge dissenting), holding that the district court had followed accepted legal principles (Pet. App. 19-20) and that the findings had ample support in the evidence (Pet. App. 20-22). It rejected arguments based on specific evidentiary rulings (Pet. App. 23-26) and concluded that the attack on the fairness of Chief Judge Inch was unwarranted (Pet. App. 25-26).

ARGUMENT

1. The applicable legal principle was correctly declared by both the trial court and the court of appeals

when they ruled that possible rezoning should be considered simply to the extent that this possibility enhances the present market value of the property. That this possibility was in fact given practical effect in the award appears from the $1500 per acre increase over the Government's appraisal, which was the only proof of residential value.

The petition charges that government officials had acted in bad faith in opposing a zoning change prior to the condemnation. Apart from the fact that a claim of bad faith was not made in the trial court (Pet. App. 22, note), we point out that the district court found that the Government's opposition "was based upon flight hazards which might be created as well as the proposed acquisition of a part of the lands involved in the planned change" (155a). The majority of the court of appeals held that this finding was supported by the record (Pet. App. 21-22). There is thus no dispute as to the principle involved, *i.e.*, that possible or prospective changes in zoning may be taken into account to the extent that such prospects are a factor influencing present market value. The only dispute is whether government officials frustrated a change in zoning by action taken in bad faith. This is a question of fact which two courts have resolved against petitioner (even though the question was not properly raised in the district court).[3] There is thus no issue which calls for review by this Court.

2. The rulings of which petitioner complains were

---

[3] General Condon, Colonel Preston and a civilian employee at Mitchel Field testified that, before the zoning board, they relied upon flight hazard as the reason for the Government's opposition to rezoning. This was not challenged on cross-examination nor was it otherwise controverted at the trial.

fully and fairly considered by Chief Judge Clark in his opinion for the court below (Pet. App. 23-25), which found that there had been no prejudicial error. It suffices for present purpose to point out that each of the challenged rulings turns upon particular facts and circumstances and that none of them raises an issue of any general importance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
Attorney.

DECEMBER, 1958.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1958 400000 7/9